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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
LLOYD, EMILY M	

ART UNIT	PAPER NUMBER
3736	

NOTIFICATION DATE	DELIVERY MODE
10/07/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/500,518	HESKE ET AL.	
	Examiner	Art Unit	
	EMILY M. LLOYD	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 July 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *57-80 and 92-104* is/are pending in the application.

4a) Of the above claim(s) *58-65,69-80 and 92-97* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *57,66-68 and 98-104* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *20100706*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The Examiner acknowledges Applicant's amendments to claims 57, 68 and 98. Currently, claims 57-80 and 92-104 are pending, and claims 58-65, 69-80 and 92-97 are withdrawn.

Information Disclosure Statement

The Examiner notes that the kind code, issue date, and Name of Patentee or Applicant do not match the Patent Number for Cite No 1 of Applicant's 6 July 2010 IDS. The Examiner has updated the kind code, issue date, and Name of Patentee or Applicant based on the Patent Number provided by Applicant. However, as the Patent Number provided is to a gas burner, it is unclear if Applicant intended to cite this reference.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 57, 66-68 and 98-100 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 57 and 98, "the biopsy device being both held and operated by the same single hand during the medical procedure" requires a hand. The Examiner notes that body parts are not a process, machine, manufacture, or composition of

matter; as such, claims that require a body part are non-statutory. Claims 66-68, 99 and 100 are rejected as ultimately depending on claim 57 or 98.

Claims 57 and 98 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 57 and 98 positively recite limitations that overlap statutory classes. In this case, Applicant has positively recited a method and an apparatus in the same claim. See MPEP 2173.05(p) II. See "the biopsy device being both held and operated by the same single hand during the medical procedure." Claims 66-68, 99 and 100 are rejected as ultimately depending on claim 57 or 98.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 57, 66-68 and 98-101 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent 4605011 (Naslund) as modified by United States Patent 5964716 (Gregoire et al.) and United States Patent 4989614 (Dejter, Jr et al.) and the admitted prior art of the first U-shape opening is sized to receive the guide of the removable element.

Regarding claims 57, 98 and 101, Naslund discloses a biopsy device for tissue collection (Figure 1), comprising: a housing (1) containing a power source (12); and a unitary removable element (2, 3, 4, 5, 6 and 7), comprising a biopsy needle module (2 and 6) and a pressure source (4 and 5), the biopsy needle module having a biopsy needle carrier (6), wherein the removable element is configured for integration into the housing (Figure 1) and with the pressure source (4 and 5) and the biopsy needle module (2 and 6) being spaced apart in the housing (Figure 1), and a hollow connecting element communicatively coupled between the biopsy needle module and the pressure

source (3); wherein the biopsy device is configured for entirely single handed operation by a physician (during use, the physician only has to pull trigger 9), the biopsy device being configured to be operationally self-contained (Figure 1) such that an entirety of the biopsy device can be held by a single hand during a medical procedure (Figure 1), having no cables or lines extending from the housing to external units (Figure 1), and the biopsy device being both held and operated by the same single hand during the medical procedure (during the medical procedure, the physician only has to pull trigger 9, and this is done with the same hand that is holding the biopsy device), the unitary removable element being configured to be mounted to the housing (Figure 1) and with at least a portion of the hollow connecting element being external to said housing (Figure 1).

Naslund does not expressly disclose that both the pressure source and the biopsy needle carrier are contained within the housing; the housing comprises a lower housing segment with lateral walls, a housing lid matched to the lower housing segment and having a longitudinally displaceable locking mechanism mounted to the housing lid and configured to engage a fastening device on the lower housing segment, and a first end lid and a second end lid, each connected to the lower housing segment; wherein the second end lid has a first U-shape opening and a second U-shape opening, and the first end lid has a third U-shape opening.

Gregoire et al. teach that the biopsy needle carrier is contained within the housing (52, 53, 60 or 62 Figure 1); the housing comprises a lower housing segment with lateral walls (Gregoire et al. walls of housing 31a leading up to cover 38 Figure 1),

a housing lid matched to the lower housing segment (Gregoire et al. cover 38 Figure 1), and a first end lid and a second end lid (Gregoire et al. walls of housing 31a at the distal and proximal portions of the device (where back plate 36 is the second/proximal housing lid; the portion opposite back plate 36 is the first/distal housing lid) Figure 1), each of the first and second end lid being connected to the lower housing segment (Gregoire et al. housing 31a is connected to back plate 36 and the portion opposite back plate 36, Figure 1); wherein the second end lid has a first U-shape opening and a second U-shape opening (Gregoire et al. back plate 36 and probe 45 Figure 1, also tissue extractor 65, probe slot 39, and detent pin 82, Figures 6 and 7), the first end lid has a third U-shape opening (Gregoire et al. front end lid/portion Figure 1 receives probe 45 Figure 5), and a portion of the removable element is received at each of the first U-shape opening, the second U-shape opening and the third U-shape opening (Figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the biopsy device of Naslund with the invention of Gregoire et al. to provide for a more compact housing that is easier to hold, and to provide for a housing that better protects its elements by enclosing them.

Naslund as modified by Gregoire et al. teach the invention of claims 57, 98 and 101 except for that the pressure source is contained within the housing; and the housing lid having a longitudinally displaceable locking mechanism mounted to the housing lid and configured to engage a fastening device on the lower housing segment. Dejter, Jr et al. teach that the pressure source is contained within the housing (Figure 13) and that the housing lid has a locking mechanism (Dejter, Jr et al. latch 89 and release button 83

Figure 15 and Column 10 line 64-Column 11 line 7) mounted to the housing lid and configured to engage a fastening device on the lower housing segment (portion of lower segment that catches latch 89 Figure 15 and Column 10 line 64-Column 11 line 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the features of Dejter, Jr et al. with the invention of Naslund as modified by Gregoire et al. to provide for keeping the pressure source securely contained in the housing and thus protected from exposure to the environment, and to provide for securing the lid of the device to the remainder of the device in a closed position.

Further, Naslund as modified by Gregoire et al. and Dejter, Jr et al. are moot as to the direction of the locking mechanism. However, assuming that such a direction is not already longitudinally displaceable, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have such a locking mechanism be longitudinally displaceable as this is a simple rearrangement of parts regarding the positioning/direction of the locking mechanism that would not have modified operation of the device, and the direction of displacement of the locking device is an obvious matter of design choice. See MPEP 2144.04 VI C Rearrangement of Parts.

Further, Naslund as modified by Gregoire et al. and Dejter, Jr et al. teach, as combined, multiple U-shaped openings for receiving portions of the removable element, a portion of the hollow connecting element external to the housing, the pressure source not being longitudinal with the biopsy needle, and the pressure source being inside the

housing. Therefore, it would have been obvious to one having ordinary skill in the art to use the first U-shape opening and the second U-shape opening to allow the hollow connecting element to be external to the housing and to complete the fluid path that extends between the two openings external to the housing as this would be a design choice in view of the teachings of Naslund, Gregoire et al. and Dejter, Jr et al. regarding multiple U-shaped openings for receiving portions of the removable element, a portion of the hollow connecting element external to the housing, the pressure source not being longitudinal with the biopsy needle, and the pressure source being inside the housing.

Regarding claims 66, 68, 99 and 100, Naslund as modified by Gregoire et al. and Dejter, Jr et al. teach the limitations of claims 57, 98 and 101, as well as that the housing comprises a lower housing segment with lateral walls of different heights (having lateral walls of different heights is obvious as this is a change in shape that is obvious in the absence of persuasive evidence that this particular configuration is significant, see MPEP 2144.04 IV B Changes in Shape); and a third portion/hollow connecting element is located between the first and second U-shape openings external to the housing (see rejection above).

Regarding claim 67, Naslund as modified by Gregoire et al., Dejter, Jr et al. and Jewett teach the biopsy device of claim 66, including guide elements disposed on the removable element (Gregoire et al. see Figure 1), as well as the third U-shaped opening a the top of the first end lid being sized to receive a portion of the removable element as discussed above. Naslund as modified by Gregoire et al. and Dejter, Jr et al. do not expressly disclose that the first U-shape opening is sized to receive the guide of the

removable element. However, the Examiner notes that this limitation is rejected by admitted prior art as Applicant's 6 July 2010 traversal was inadequate (see the Response to Arguments below). It would have been obvious to one having ordinary skill in the art to combine the admitted prior art of positioning the guide of the removable element in the front opening of the biopsy device as this positioning would provide the advantage of placing the guide and removable element at a known location which could be observed while preparing and operating the device.

Claims 102-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naslund as modified by Gregoire et al. and Dejter, Jr et al. as applied to claims 57, 66-68 and 98-101 above, and further in view of United States Patent 3561429 (Jewett), and the admitted prior art of a biopsy embodiment in which the cutting sheath is outside the biopsy needle and the use of a guide roller that is slidably disposed on said cutting sleeve, the guide roller being received by the first U-shape opening.

Regarding claims 102 and 103, Naslund as modified by Gregoire et al. and Dejter, Jr et al. teach the limitations of claims 57, 98 and 101, including a first and second U-shape opening, as well as that the biopsy needle module includes a first component configured to be received by the first U-shape opening (Gregoire et al. Figure 1), and the first component is a found profile component of the biopsy needle module (Gregoire et al. Figure 1). Naslund as modified by Gregoire et al. and Dejter, Jr et al. do not expressly teach that the pressure source includes a second component configured to be received by a second opening, and that the second component is a

nozzle portion of the pressure source. Jewett teaches a pressure source (69 and 70 Figure 7) that includes a second component (nozzle Figure 7) configured to be received by a second opening (opening for nozzle Figure 7), and that the second component is a nozzle portion of the pressure source (nozzle Figure 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the nozzle of the pressure source being received within a second opening as taught by Jewett with the invention of Naslund as modified by Gregoire et al. and Dejter, Jr et al. to provide for ensuring that the nozzle end of the pressure source is secured, to provide for easy connection and removal of the hollow connecting element if needed, and to provide for seeing the hollow connecting element so that it can be monitored for blockages, etc.

Regarding claim 104, Naslund as modified by Gregoire et al., Dejter, Jr et al. and Jewett teach the biopsy device of claim 103, wherein the biopsy needle module includes a biopsy needle and a cutting sleeve coaxially positioned with respect to the biopsy (Gregoire et al. 45 and 60 Figure 2), as well as guide elements (see Figure 1). Naslund as modified by Gregoire et al. and Dejter, Jr et al. do not expressly disclose the use of a guide roller that is slidably disposed on said cutting sleeve, the guide roller being received by the first U-shape opening. However, the Examiner notes that this limitation is rejected by admitted prior art as Applicant's 6 July 2010 traversal was inadequate (see the Response to Arguments below), and that a biopsy embodiment in which the cutting sheath is outside the biopsy needle is also admitted prior art for the same reason. It would have been obvious to one having ordinary skill in the art to combine

the admitted prior art of positioning the guide, disposed on the cutting sleeve, of the removable element in the front opening of the biopsy device as this positioning would provide the advantage of placing the guide and removable element at a known location which could be observed while preparing and operating the device.

Response to Arguments

Applicant's arguments, see pages 9-12, filed 6 July 2010, with respect to 35 USC 112 first and second paragraph rejections of claims 101-104 have been fully considered and are persuasive. The 35 USC 112 first and second paragraph rejections of claims 101-104 have been withdrawn.

Applicant's arguments filed 6 July 2010 regarding the 35 USC 103(a) rejections of claims 57, 66-68 and 98-104 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Examiner notes that numerous of Applicant's arguments are based on arguments against individual references; for example, page 12 arguments regarding elements not contained in the housing of Naslund (when Naslund was not cited for this feature), pages 12-13 arguments against Gregoire et al. for not having features disclosed in Naslund, page 14 arguments regarding "both the pressure source and the biopsy needle carrier being contained within the housing and with the pressure source

and the biopsy needle module being spaced apart in the housing", page 18-19, page 20, page 21

Regarding Applicant's arguments that "significant change in the structure and function of the combined elements of [the prior art] would have been required" (page 13, 15, 18, 20, 22, 24), the Examiner notes that Applicant is stating a conclusion without providing information as to which elements would have required a significant change in structure and function. The Examiner disagrees with this conclusion, and notes that without further details from the Applicant, the Examiner can't respond to the basis for Applicant's conclusion.

Regarding Applicant's argument that "both the pressure source and the biopsy needle carrier being contained within the housing and with the pressure source and the biopsy needle module being spaced apart in the housing", the Examiner notes that all of claim 57 except for "both the pressure source and the biopsy needle carrier being contained within the housing" is disclosed by Naslund. The Examiner notes that "in" in "the pressure source and the biopsy needle module being spaced apart in the housing" does not require that the pressure source and biopsy needle module are within the housing; as the word "in" is defined by the dictionary to include "to or at an appropriate place" and "near". As such, Naslund discloses "with the pressure source and the biopsy needle module being spaced apart in the housing." The additional limitations are taught by Gregoire et al. and Dejter, Jr et al. as discussed above. The Examiner notes that this is another instance of arguing against the references individually.

In response to applicant's argument that the prior art is not configured to receive portions of the removable element in the U-shaped openings, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "a first portion of the removable element and a second portion of the removable element are received") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding Applicant's arguments regarding Official Notice, pages 16 and 24-25, the Examiner first notes that Official Notice was taken in the prior Office Action. As Applicant responded to the "common knowledge statement" of claims 67 and 104 with a discussion of Official Notice, Applicant appears to have reasonably understood the Examiner's position. Further, the Examiner notes that with regards to the use of "common knowledge" throughout MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art, the Examiner's use of Official Notice was clear.

Regarding Applicant's summaries of the Examiner's rejections of claims 67 and 104, the Examiner notes that numerous elements were explicitly taught or suggested by the prior art.

Regarding Applicant's argument that Official Notice is with regards to the capability of "instant and unquestionable demonstration as being well-known", the Examiner notes that MPEP 2144.03 A further discussed this requirement, and in doing so, emphasizes esoteric technology and theories:

> It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. In re Ahlert, 424 F.2d at 1091, 165 USPQ at 420-21. See also In re Grose, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) ("[W]hen the PTO seeks to rely upon a chemical theory, in establishing a prima facie case of obviousness, it must provide evidentiary support for the existence and meaning of that theory."); In re Eynde, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.").

The Examiner further notes that with regards to support for the limitations of "the first U-shape opening is sized to receive the guide of the removable element" (claim 67), "a biopsy embodiment in which the cutting sheath is outside the biopsy needle" (claim 104) and "the use of a guide roller that is slidably disposed on said cutting sleeve, the guide roller being received by the first U-shape opening" (claim 104), such elements

"are capable of instant and unquestionable demonstration." The Examiner notes that Figures 2 and 12 (see also Figures 1, 11a-11e and 12f-12h) of Applicant's specification show "instant and unquestionable demonstration" of these features; as such, unlike esoteric technology and theories, these elements and features are capable of "instant and unquestionable demonstration." Therefore, Applicant's arguments that "the first U-shape opening is sized to receive the guide of the removable element" (claim 67), "a biopsy embodiment in which the cutting sheath is outside the biopsy needle" (claim 104) and "the use of a guide roller that is slidably disposed on said cutting sleeve, the guide roller being received by the first U-shape opening" (claim 104) are not "capable of instant and unquestionable demonstration as being well-known" are not persuasive.

The Examiner further notes that MPEP 2144.03 C states "To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art." (emphasis added). The Examiner notes that Applicant's arguments are based on the "capability of instant and unquestionable demonstration" and not based on "why the noted fact is not considered to be common knowledge or well-known in the art." In other words, Applicant has not stated "why the noted fact is not considered to be common knowledge or well-known in the art", and has instead argued that the noted facts are not capable of a particular type of proof. However, arguing that the noted facts are not capable of a particular type of proof does not provide an argument as to "why the noticed fact is not considered to be common knowledge or well-known in the art." Applicant's further statements/arguments

that they expressly do not admit that these features are prior art and that they request art also do not address "why the noticed fact is not considered to be common knowledge or well-known in the art."

MPEP 2144.03 C further states:

> If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.

While the Examiner acknowledges Applicant's statements that the noticed facts are not admitted prior art, as the traversal is not adequate for the reasons provided above, the noticed facts are considered admitted prior art because Applicant's traversal was inadequate.

Applicant's further arguments regarding the all limitations of claims 67 and 104 not being taught by the prior art are not persuasive as the prior art and the features now considered admitted prior art together teach these limitations.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was

within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The Examiner further notes that Naslund teaches the hose 3 that is both inside and outside the housing (see Figure 1).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EMILY M. LLOYD whose telephone number is

(571)272-2951. The examiner can normally be reached on Monday through Friday 8:30 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Emily M Lloyd
Examiner
Art Unit 3736

/EML/

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736